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\* \* \* It is proposed to issue this work Annually, and suggestions are invited from the Profession.

IMPORTANT NOTICE.

The notes to the Acts and Rules have been thoroughly revised, and, to a great extent, re-written; also re-arranged and sub-divided under appropriate titles. Considerable additions have been made to the notes dealing with the Chancery Division.

The Index has been considerably enlarged and entirely re-constructed, and has been arranged alphabetically under each heading.

In the Table of Cases cited will be found references to the contemporary Reports down to October, 1887.

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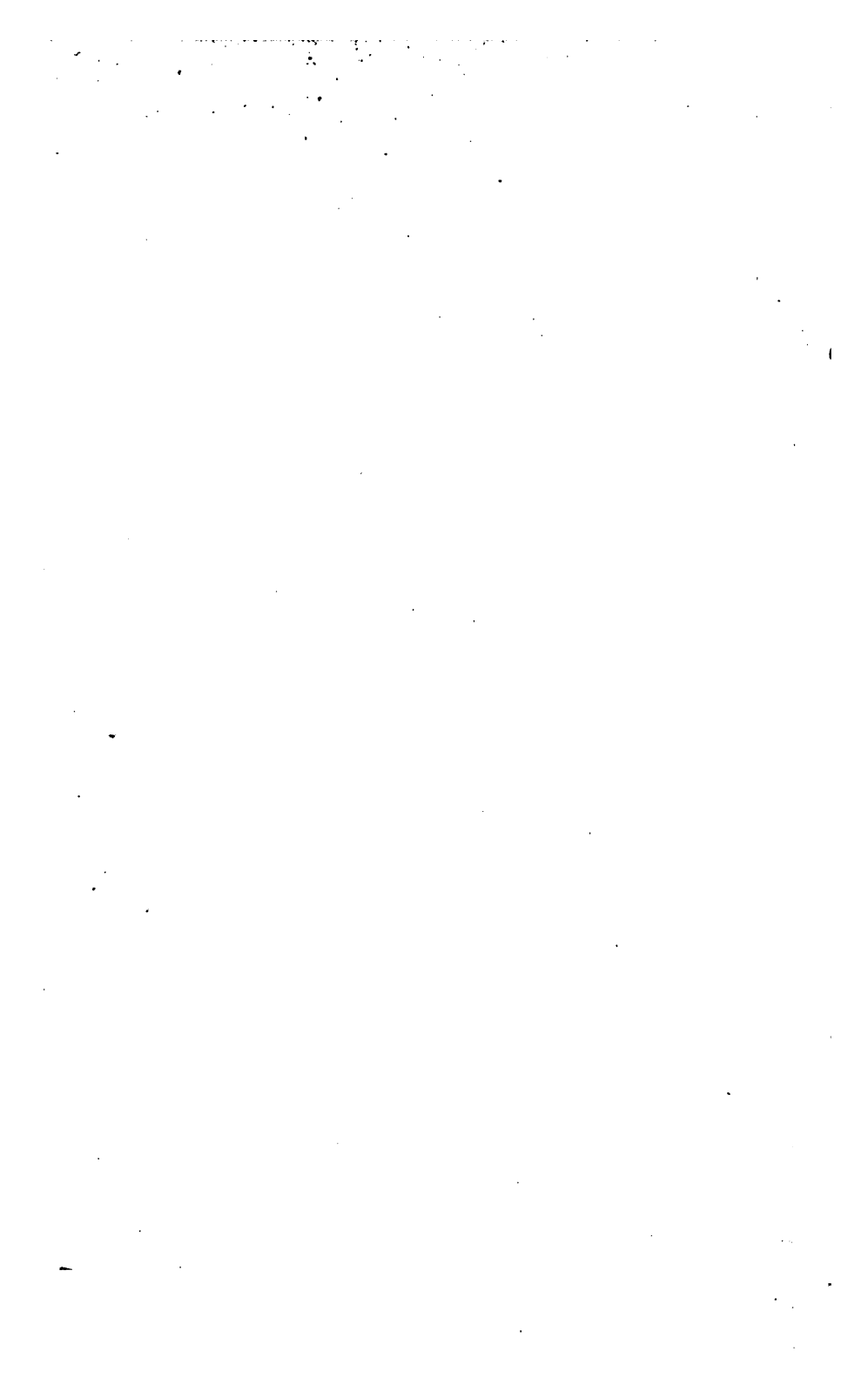
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**THE**  
**MERCHANDISE MARKS ACT, 1887.**



THE  
MERCANDISE MARKS ACT 1887

WITH SPECIAL REFERENCE TO THE

IMPORTATION SECTIONS

AND THE

*CUSTOMS REGULATIONS & ORDERS MADE THEREUNDER,*

TOGETHER WITH THE

CONVENTIONS WITH FOREIGN STATES FOR PROTECTION OF TRADE MARKS

AND ORDERS IN COUNCIL UNDER THE PATENTS, DESIGNS AND

TRADE MARKS ACT, 1883, ETC.

BY

HOWARD PAYN,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,

AND OF THE SECRETARY'S DEPARTMENT OF THE BOARD OF CUSTOMS.

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## PREFACE.

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As a member of the Committee appointed by the Board of Customs to draw up the Regulations and Orders under the Merchandise Marks Act, 1887, as regards imported goods, and having since their issue been brought into contact with a large number of persons desiring to know whether their various marks and brands would pass the Customs, I have necessarily had many of the difficulties occasioned by the new Act specially brought to my notice. I have found that most persons are willing enough to mark their goods in conformity with the law, but that they have experienced great difficulty, especially as regards indirect indications of origin, in knowing what the sections of the Act actually require.

The introductory Chapter deals with most of the points brought into notice up to the present time, and will, I hope, assist those concerned in understanding the principles laid down in the Act, and the various Orders issued under it.

My thanks are specially due to C. J. Follett, Esq., the Solicitor of the Board of Customs, for many useful suggestions, and for having looked over the proof sheets.

I should like to add, that though official rules and documents are quoted, the work is not issued as an official work, and the Board of Customs would not be bound by any of the opinions expressed.

H. P.

*18th January, 1888.*

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THE  
MERCHANDISE MARKS ACT,  
1887.

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GENERAL INTRODUCTION.

—◆—

THE Merchandise Marks Act, 1887, forms such a new point of departure in the law affecting the false marking of goods that it is not thought necessary to burden this manual with any elaborate history of previous legislation, or of legal decisions under former Acts.

The Merchandise Marks Act, 1862, made it a misdemeanour to forge or counterfeit any trade mark, or to falsely apply any such trade mark, with intent to defraud, to any article, or to any wrapper in which any goods were to be sold; and various other offences in connection with the sale of goods with forged or false marks were punishable under it. Difficulties were,

Merchan-  
dise Marks  
Act, 1862.

M.

B

however, occasioned by the mode of procedure against offenders laid down by the Act, which, being in most cases by indictment, was found both expensive and tedious, and, moreover, the difficulty of proving an intent to defraud was entirely thrown on the prosecution. No provision was made for the issue of search warrants, nor was there any power to enable the Customs to detain falsely-marked goods upon importation into this country.

Inter-  
national  
Conven-  
tions :  
Paris and  
Rome.

The question as to the false marking of goods, and the damage done to national trade by the origin of goods being falsely described, had long occupied the attention of foreign governments, and, in 1883, an International Conference was held in Paris to consider the question, and an understanding arrived at, which was embodied in the Convention of Paris, 1883.<sup>1</sup> Several additional Articles were added at a subsequent conference held at Rome in 1886, at which this country was represented, but these additional Articles have not been ratified by the governments concerned.

Parlia-

As an outcome of these conferences, and

<sup>1</sup> See p. 94.

in view of the stipulation that each country <sup>mentary</sup> was bound to put its domestic legislation <sup>bills.</sup> into harmony with its treaty engagements, three Bills—the Merchandise Marks Act, 1862, Amendment Bill, the Merchandise (Fraudulent Marks) Bill, and the Merchandise Marks Law Consolidation and Amendment Bill—were introduced into Parliament and referred to a select committee. The select committee sat from 17th April until 30th June, 1887, and collected a large mass of evidence as to the use of fraudulent marks, from which it appeared that trade descriptions were in extensive use, which although they might not be false as between traders themselves, yet were decidedly misleading as between them and their customers.

The select committee, after considering the evidence laid before them, selected the Government Bill (the Merchandise Marks Law Consolidation and Amendment Bill), to which they made considerable additions, and the Act of Parliament which was subsequently passed is a consolidation of what was retained of the Merchandise Marks

Act, 1862, together with the amendments decided on by the committee, and the additional provisions rendered necessary by treaty obligations.

Merchan-  
dise Marks  
Act, 1887.

Several alterations were made by the new Act which may be shortly summarized as follows:—The trade marks referred to must be trade marks registered under the Patents, Designs and Trade Marks Act, 1883, or any trade mark or marks which either with or without registration is protected by law in any British Possession or Foreign State to which the provisions of section 103 of that Act are by Order in Council applicable.<sup>1</sup> An offender under the Act may be proceeded against summarily. In most cases it casts upon the defendant the burden of proof that he acted without fraudulent intent; search warrants may be used to enter premises to search for and seize fraudulently-marked goods; new provisions are introduced with regard to the hall-marking of watch cases manufactured abroad, and extensive powers are imposed upon the Customs authorities to

<sup>1</sup> For list of countries, see pp. 88, 89.



seize any goods which, if sold, would be liable to forfeiture under the Act.

As a great deal of interest now attaches to the Customs provisions, it will be necessary to review the law as regards the importation of prohibited goods.

Section 42 of the Customs Consolidation Act, 1876, runs as follows:—

Section 42  
of the  
Customs  
Consolidation Act,  
1876.

“The goods enumerated and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom, contrary to the prohibitions or restrictions contained therein, such goods may be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

“A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.

“*Goods Prohibited to be Imported.*

\* \* \*

“Articles of foreign manufacture, and any packages of such articles bearing any names, brand, or mark being or purporting to be the name, brand, or mark of manufacturers resident in the United Kingdom, or any name, brand, or mark which states or implies that such articles were manufactured at any place in the United Kingdom.

“Any name, brand, or mark which states or implies that any such articles were manufactured at a town or place having the same name as a place in the United Kingdom, shall, unless accompanied by the name of the country in which such place is situate, be deemed for the purposes of this section to state or imply that such articles were manufactured at a place in the United Kingdom.”

\* \* \*

Revenue  
Act, 1883.

By the Revenue Act, 1883 (46 & 47 Vict. c. 55), these prohibitions, as regards goods with British marks, were repealed, and the following substituted:—

“(a) Articles of foreign manufacture not imported by, or for, but bearing

the name and address, or name and trade mark, of a manufacturer of such articles, resident or having a place of business in the United Kingdom.

“(b) Articles of foreign manufacture bearing, either alone or in conjunction with other names or words, the name of a part of, or a place in, the United Kingdom, which name in the opinion of the Commissioners of Customs has been placed upon such articles in order to impart to them a special character of British manufacture.”

It will be observed that under sub-section (a), above, merchants were allowed to import into this country foreign goods bearing their names and trade marks, or names and addresses, so long as (under sub-section (b)) the name of the place given as the address was not calculated to give a special character of British manufacture to the particular goods.

Importation of goods under Revenue Act, 1883.

It was necessary for the importer to give some evidence of his proprietary rights in the name and trade mark on the goods

Declarations A. and B.

imported by him, and this was proved by his declaration. The declaration could either be made by the proprietor on each importation, or a general declaration might be made to cover further importations of his goods, and an agent appointed to act for him. These general declarations were registered at the Custom Houses at the various ports at which the merchant desired to land his goods.

Defects of  
Revenue  
Act, 1883.

The effect of these provisions has been to create considerable uncertainty and friction, as although a dealer who imported goods might have his name and trade mark or his name and address marked on them, so long as he lived in a town which had no reputation for the manufacture of similar articles, yet if he lived in a town which had a manufacturing reputation for such goods he was unable to do so. Thus, "John Smith, Brighton," would be allowed on cutlery, but it would not be allowed if the address were Sheffield. These two instances are, no doubt, easy to decide upon, but in a great many cases it was extremely difficult to determine to

what extent so shifting a matter as a reputation should operate as a prohibition. Manufacturers of all sorts are so spread about the country, and the reputations acquired by many places are so purely local, that differences of opinion soon arose in applying the section to particular cases. Moreover, as the section only referred to articles bearing names *and* trade marks, or names *and* address, goods with names *or* trade marks alone were imported without any restriction whatever. From this it will be seen that the Act of 1883 fell very far short of what is now desired, viz., that British marks should only be applied to British goods, and that if distributors desire to affix their names or marks it should only be lawful to do so when accompanied by a statement, in so many words, that the articles themselves are of foreign manufacture.

The Merchandise Marks Act, 1887, has been passed to secure this result, and under its provisions not only will goods bearing any marks which imply British manufacture be liable to seizure on importation,

Merchan-  
dise Marks  
Act, 1887.

but also goods bearing any false trade description, that is, any false statement or other indication, direct or indirect, as to the place or country of origin or production, or as to number, quantity, measure, gauge, or weight, the mode of manufacture, the material of which any goods are composed, or any mis-statement as to any patent, privilege, or copyright. This false trade description, however, must be false *in a material respect* as regards the goods to which it is applied, and it includes any alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect; and the fact that a trade description is a trade mark, or part of a trade mark, will not prevent such trade description being false within the meaning of the Act.

Difficulties  
thrown on  
Customs.

It will be seen from this that a very difficult and delicate task is thus thrown upon the officers of Customs; for the Act not only very largely extends the area of prohibited goods for the benefit of British subjects, but also affords similar protection

to the subjects of foreign states, with a limitation as regards *Trade Marks only* to those States which by Order in Council are made to participate in the provisions of the 103rd and 104th sections of the Patents, Designs and Trade Marks Act, 1883.<sup>1</sup> A list of these countries will be found at pp. 88 and 89.

It is quite evident that in many cases the officers of Customs, who are not experts, could not possibly, from their own knowledge, judge between a trade description and a false trade description; and, therefore, the Act very properly leaves to the persons who are specially interested in the goods, liberty to secure their detention by the Crown officers, provided that those who claim their interference should give security to protect the Crown from any action for damages for what might afterwards turn out to be a wrongful detention. The procedure to be adopted is very simple, and will be found detailed in the Regulations (at p. 71). A merchant learns from his agents abroad that

Detention  
of goods  
by infor-  
mation.

<sup>1</sup> For these sections see p. 107.

his name or mark is being pirated, and that consignments of goods bearing forged marks are being shipped to this country : all that is required is a notice to the officers to enable them to look out for the particular packages, and, at the same time, a deposit of a sum of money with the officers of Customs, to cover any additional expense which may be incurred in the more extended examination required by his notice.

Examina-  
tion of  
goods de-  
tained on  
informa-  
tion.

If, on the arrival and examination of the goods, the officer is satisfied that there is no ground for their detention, the goods will be delivered; if he finds that some evidently forged mark or false trade description has been applied to the goods, he will seize them on the part of the Crown; but should the defect be one which is not so apparent, such, for instance, as to whether the goods were or were not actually made or produced in the country from which they come, the mode of manufacture or production, or the material of which they are composed, then the officer would only detain the goods at the risk of



the complainant, who in that case would give a bond<sup>1</sup> to the Crown to cover any damages which might ensue from the informant's mistake. As a rule, however, the more patent defects would be apparent to the Customs officers, and the Act throws upon them the duty of detaining goods bearing any such marks.

The goods, therefore, which are now prohibited to be imported into this country may be shortly stated as follows:—

Goods  
prohibited  
under  
Merchan-  
dise Marks  
Act, 1887.

(i.)<sup>2</sup> Goods, whether of foreign make or produce, or British goods brought back, having forged trade marks applied to them.

(ii.) Like goods, having applied to them a false trade description as to the place or country in which they were made or produced; or as to number, quantity, measure, gauge, or weight, mode of manufacture or production, or material of which composed; or as to the goods being

<sup>1</sup> The forms of notice and bond will be found in the Appendix, p. 76.

<sup>2</sup> See Customs General Order, p. 78.

the subject of any existing patent, privilege, or copyright.

False  
statements  
of origin.

It will further be observed that a "false statement of origin" is not confined to false statements as regards the manufactures of the United Kingdom, but it includes false statements in regard to the manufactures of foreign countries.

It will be useful now to examine these several disqualifications attaching to imported goods in the order given in section 3.

Forged  
trade  
mark.

The first is goods bearing any forged trade mark, and this, by section 4, consists of a trade mark, or mark so nearly resembling the trade mark of a manufacture as to be calculated to deceive, or a falsification of any genuine trade mark, whether by alteration, addition, or effacement, or otherwise.

The application of forged trade marks to imported goods is happily not common, but it does occasionally occur, and especially in the case of goods brought to this country in transit for sale in foreign countries.

An exact resemblance or fac-simile is not required to constitute the crime of forgery; for if there be a sufficient resemblance to show that a false marking was intended, and that the false stamp is so used as to have an aptitude to deceive, it is sufficient to bring it under the Act.

Apart from the Merchandise Marks Act, such an imitation is not a forgery, but such an imitation if it has been intentional, and has been the means of inducing persons to part with their money in the belief that they were buying one thing, when in fact they were buying another, is sufficient to support a conviction on an indictment for obtaining money by false pretences.

A forged trade mark will be difficult to detect on importation in the absence of information from the person aggrieved. Detention by information is provided for in the Customs regulations, and a great deal must depend on the vigilance of owners of marks to prevent a fraudulent infringement of their rights.

Should a forged trade mark be found in this country, the owner may, if he pleases, Forged trade marks on

goods  
found in  
this  
country.

commence an action in equity to restrain the defendant from using this mark, or he may bring an action for damages, or he may indict him for obtaining money under false pretences, or he may take advantage of the simpler procedure of the new Act.

False  
trade de-  
scription  
as to place  
of origin.

By far the larger number of offences against the Act will fall under the head of a false description as to the place or country in which any goods are made or produced, and as the indication may be direct or indirect a very large proportion of the marks ordinarily used in trade will come under this head.

The marking of goods with the names of places in this country, whether as the address of a manufacturer or alone, will be an offence against the section, but as the illegality of the mark arises from its falseness, this false character will be removed by the addition of a definite indication of the place or country in which the goods were produced; as, however, the simple addition of the name of a foreign place to the English address, such as London and Paris, would not indicate in which place the goods were

made, it will be necessary, in order to comply with the section, that a definite statement should be added, such as "manufactured in Germany," to indicate the origin of the goods.

With regard to direct false indications of origin the matter is simple enough. If knives are imported marked Sheffield when they have been manufactured in Germany, it will be evident that a fraud has been committed.

Direct  
false indi-  
cations of  
origin.

But in the case of indirect indications of origin the matter is not so simple. The use of the English language in descriptive expressions such as "superfine make" on a label applied to goods coming from a foreign-speaking country is undoubtedly, under the Act, a false indication of manufacture in the United Kingdom, and so possibly would the use of single words, such as "patent," "registered," or "warranted," or English measures, such as yards, feet, inches, dozens, or any usual abbreviations of such words. In the event of such words being applied to goods, a counter-statement as to manufacture abroad should be added to secure the goods from detention.

Indirect  
false state-  
ments of  
origin.

“ & Co.” Similarly, any words which might imply manufacture by English firms, such as “ & Co.,” would bring any goods so labelled within the section if the goods came from foreign-speaking countries, and would also require a definite indication of manufacture abroad.

False indications in foreign languages.

In addition to these indications of British manufacture, there are many other words used on goods in other languages which might be false or not according to the country from which they are imported. Such words, for instance, as “ Mode de Paris,” on goods brought from Germany would clearly be a misdescription, but such words would be legal if the goods came from France. This is in exact accordance with the law at present existing in France on the subject. It may be, therefore, clearly laid down that the use of the language of any particular country on labels, or in any other way applied to goods, will be considered as evidence that the goods are the produce of the country in which that language is spoken, and any goods so marked, coming from other countries than that so indicated, must bear, in addition to

such language, a distinct indication as to the country in which they were produced.

But in addition to the English language there may be other indirect indications, such as V. R., the Royal Arms, the Queen's Crown, the Lion of Scotland, the Harp of Ireland, or any similar device which might imply a national character; and, generally speaking, it may be stated that any such mark applied to goods must have some such counter-statement, as "manufactured abroad," added to it in order to prevent an infringement of the section.

The English language applied to goods from America, or other English-speaking country, would not appear to be illegal so long as the description does not contain any other British indication or the name of a place not being the actual place or country of production; but goods bearing the names of towns having similar names to towns in this country must have their origin distinctly indicated. In the case of such American towns, the letters U.S.A. would be a sufficient indication of the country of origin.

Other indirect indications of British origin.

English language on goods from English-speaking countries.

False  
trade de-  
scriptions  
as to  
weight,  
&c.

With regard to other sub-headings of section 3, namely, false trade descriptions as to the number, quantity, measure, gauge, or weight, offences of this nature would be evident frauds which the purchaser of such articles can detect, and which if found by the Customs officers would cause the seizure of the goods. Many of the frauds coming under this head as to false weight would come within the scope of the Weights and

Weights  
and Mea-  
sures Act.

Measures Act. In the sale of goods by weight, if money is obtained by representing the weight sold to be greater than it really is, an indictment for false pretences will be good, apart from any proceedings taken under the Merchandise Marks Act.

False de-  
scriptions  
as to ma-  
terial, &c.

False descriptions as to mode of manufacturing or producing any goods, or as to the material of which any goods are composed, such as goods marked "Hand-Made," when the goods are really machine-made, "cast steel," when the goods are merely run metal, or articles represented to be made of one material when in point of fact they are made of another, or an article otherwise falsely described in any material respect,



would also be liable to detention on importation; but such matters would very rarely be known to the Customs, and detentions made on these grounds would probably be made on information by persons whose interests are concerned. Moreover, the words "in a material respect" would occasion some uncertainty in the matter, and it will probably be found in practice that detentions under this subsection will generally fall under the class of goods which would be detained on information.

In legal proceedings under the Act, the question as to whether a false trade description is false in a material respect is one which would be left to a jury to decide. Material respect.

With regard to false representations as to any existing patent, privilege, or copyright, it need only be said that such false representations would also probably fail to be detected on importation, in the absence of information; but, as already has been pointed out, any goods so marked might be liable to detention, whether such state- Patent, privilege, or copyright.

ment of patent, registration, or copyright were true or false. If false, they would be false trade descriptions, and if true, they might, in the absence of a counter-statement, be taken to be indirect indications of British manufacture.

Printed  
matter.

The position of printed matter, such as books, prints, and other similar articles, has been somewhat changed under the new Act. Formerly a distinction was made between them and "goods" properly so called. All such printed matter was left to the protection afforded by the Copyright Act, and due registration at the Custom House was rendered necessary under the 43rd and 44th sections of the Customs Consolidation Act, 1876; but the definition of "goods" given in section 3 of the Merchandise Marks Act, 1887, extends it to anything which is the subject of "trade, manufacture, or merchandise;" and, consequently, all books and other printed matter must be considered as "goods," and if printed abroad and imported with the names of publishers in this country, must bear definite indication of foreign production.

The expression used in section 3, that the word "name" includes any abbreviation of a name, does not mean mere initials, but any shortened form of a trade name that might be calculated to deceive. But with regard to initials on imported goods, it may be remarked that though mere letters, such as I. K., applied to goods, would not appear to render them liable to detention on importation, yet I. K. & Co. would do so, as the "& Co." would be an indirect indication of British manufacture, except in the case of goods imported from English-speaking countries.

Abbreviation of trade name.

The principal part of the Act which deals with prohibitions on importation is section 16, and by this section "all such goods," that is, all goods referred to in the preceding sections, which are falsely marked or falsely described in any material respect, and also all goods of foreign manufacture, bearing any name or trade mark, being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, are prohibited to be imported unless such name or trade mark

Imported goods.

is accompanied by a definite indication of the country in which the goods are made or produced.

This section is so exceedingly plain in its terms that it hardly calls for special notice. Any trade mark registered under the Patents, Designs and Trade Marks Act, or any trade mark protected by law in any British colony or foreign state to which the provisions of the 103rd section of that Act have been extended (p. 110), if applied to goods, would render such goods liable to seizure on importation, unless there is added to it a definite indication of the country in which the goods were made; and the same rule applies to any goods bearing the name, or abbreviation of a name, not being a mere initial, of any manufacturer or dealer in the United Kingdom.

The only question is, what would be considered as a definite indication.

Definite  
indication  
of origin.

In section 18, to which reference will be made further on, the words "definite indication" are fully set out, and may be taken as an interpretation of the words

used in section 16. By that part of section 18 which refers to trade descriptions which include the name of a place or country, the definite indication required is that there must be added to the trade description, immediately before or after the name of the place or country, in an equally conspicuous manner with that place or country, the name of the place or country in which the goods were actually made or produced, with a statement that they were actually made or produced there. with statement.

The definite indication, then, required by section 16 appears to be by this to some extent explained, but how far in cases not under section 18 the distinct "statement" of actual make abroad is required is doubtful, except where there is anything *indefinite* in the indication.

It will be observed that by section 18 of the Act, a trade description which is lawfully and generally applied to a particular class of goods to indicate the particular class or method of manufacture may still be used; but if such description Trade descriptions,

with  
name of  
place.

contains the name of a place, such, for instance, as Kidderminster carpets, Windsor soap, Balbriggan on hosiery, or Shetland on shawls, then such marks would be illegal unless there is added to the trade description, immediately before or after the name of the place or country, in an equally conspicuous manner with such name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Trade de-  
scriptions  
in Eng-  
lish.

In the case of imported goods, however, from foreign-speaking countries, it must be borne in mind that if the trade description is in English, a counter-statement that the goods were made abroad would also be necessary, or the English wording might convey an indirect indication of British manufacture.

It will not be necessary in this Introduction to go through the remaining sections of the Act. Notes will be found under the sections themselves which, it is hoped, may sufficiently explain any difficulties of construction; but special mention

is required in regard to sections 7 and 8, which refer to watches. At p. 117 will be found the new Customs Order, rendered necessary by the issue of the Order in Council published in the Gazette of the 9th December last.<sup>1</sup>

By section 7 it is enacted, that any words or marks applied to a watch case, which by common repute are considered as constituting a description of the country in which the watch was made, and the watch, as apart from the watch case, bears no description of the country where it was made, shall be deemed to apply to the watch or movements. According to the evidence taken before the Select Committee on the Merchandise Marks Act, it appeared that the British hall mark is by common repute considered as constituting evidence of British manufacture, and that, consequently, watches with British hall-marked cases fitted with foreign-made works were habitually sold as British watches, to the detriment of the British watch trade.

Watches,  
and watch  
cases.

Moreover, it appeared that foreign watch

<sup>1</sup> See page 112.

cases were sent to this country to have the hall marks affixed, and were then returned to Switzerland, or elsewhere, to have foreign movements fitted in them.

In this case the whole article, both watch case and watch, was of foreign make, and could be sold in this country as an English watch.

New  
Order in  
Council as  
to mark-  
ing of  
watches.

By the new Order in Council, foreign watch cases may still be assayed in this country, but a special mark showing their foreign make must be impressed on them. A list of these marks will be found at p. 115.

This Order has necessitated the issue of new regulations as regards imported watches. These regulations will be found at p. 117.

Regula-  
tions in  
conse-  
quence.

Under these regulations, watch cases made abroad and sent to this country for assay, and marked with the new hall marks applicable to foreign watch cases, will be allowed to be re-imported, provided the watch inside bears no mark, as in that case the hall mark showing the foreign origin of the watch case will



equally apply to the movements, and the article, when sold, will be evidently a foreign-made watch, and no purchaser need be deceived.

If the hall marks on re-imported cases are British, either one of two things must have happened. The hall mark may, by means of a false declaration, have been improperly applied to a foreign-marked case, or the hall mark may be a forgery. Under either of these circumstances the watch case will be liable to seizure, as the description will be a false description. Should the watch case be of English make and genuinely marked, and have been sent abroad for the purpose of being finished, or for any other cause, the usual proof of the exportation must be produced to show that they are British returned goods.

British  
assay  
marks on  
imported  
goods.

When watch cases are imported with the watches in them, and the cases are unmarked, or are marked with the proper foreign assay mark, or with the British assay mark as placed on watches made in this country, but, in addition, an equally

Watch  
cases with  
watches in  
them.

conspicuous statement that the movements were made abroad, either above or below the assay mark, and there are no marks on the works indicative of manufacture in this country, then the watches would not be liable to detention.

English  
watch  
cases with  
foreign  
works.

Should, however, the watch cases be of genuine English make, and bear the British assay mark, and have been sent abroad and fitted with foreign works, they will be liable to seizure on re-importation, unless there is upon the dial of each watch, and also engraved upon the top plate, or upon the bottom plate between the bridges, according to the construction of the watch, a definite indication of the place or country in which the works were made.

Definite  
indication  
of origin.

The definite indication would be the name of the place of manufacture, such as "Geneva;" but should the indication be indefinite, such as "London and Geneva," the indication must be made definite by such an addition as "made at Geneva," or elsewhere, as the case may be.

Registra-  
tion of

Under the Revenue Act of 1883,

evidence was required to prove the proprietary rights of importers to the names or trade marks on their goods. Such registration is no longer necessary. Provision is, however, made for similar registration should importers desire to prevent a fraudulent use of their names or trade marks; and a form of declaration for this purpose will be found at p. 91. It must be understood, however, that such registration will delay the delivery of goods, as they will be detained pending an authority from the owners for their delivery.

names and addresses.

There remains little more to be said in regard to the Act; the various Orders in Council and Customs Orders will be found at the end of this volume, which will explain points not touched upon in this Introduction, and which can be referred to if necessary.

Customs Regulations and Orders.

The Commissioners of Customs administer the Act under the directions of the Lords of the Treasury, and any appeal from the decisions of the Commissioners rests with the Treasury Board. Should im-

Appeal to Treasury.

Appeal to  
Law  
Courts.

porters, however, desire to test any questions by an appeal to a Court of Law they can do so by an action against the Customs officers, if brought within two months from the date of the seizure of the goods.

# THE MERCHANDISE MARKS ACT, 1887

(50 & 51 VICT. c. 28).



*An Act to consolidate and amend the Law relating to Fraudulent Marks on Merchandise.* [23rd August, 1887.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Merchandise Marks Act, 1887. Short title.

2.—(1.) Every person who—

(a) forges<sup>1</sup> any trade mark<sup>2</sup>; or

(b) falsely applies<sup>3</sup> to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(c) makes any die, block, machine, or

Offences as to trade marks and trade descriptions.

## MERCHANDISE MARKS ACT, 1887.

other instrument for the purpose of forging, or of being used for forging, a trade mark; or

- (*d*) applies any false trade description<sup>4</sup> to goods; or
- (*e*) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or
- (*f*) causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud,<sup>5</sup> be guilty of an offence against this Act.

(2.) Every person who sells, or exposes for, or has in his possession for,<sup>6</sup> sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

- (*a*) That having taken all reasonable

precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(b) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently;

be guilty of an offence against this Act.

(3.) Every person guilty of an offence against this Act shall be liable—

(i.) on conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(ii.) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding

## MERCHANDISE MARKS ACT, 1887.

twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and

(iii.) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4.) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

(5.) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6.) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner pro-



vided by the Summary Jurisdiction Acts: <sup>42 & 43</sup>  
<sup>Vict. c. 49.</sup>  
 Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

<sup>1</sup> For definition of forgery, see section 4.

<sup>2</sup> What constitutes a trade mark. (See section 3.)

<sup>3</sup> "Falsely applying." (See section 5.)

<sup>4</sup> "False trade description." (See section 3.)

<sup>5</sup> The burden of proof is thrown on defendant that he acted without intent to defraud, and see special defence provided in section 6 for die-makers, &c., employed in the ordinary course of their trade.

<sup>6</sup> Search warrants may be issued by justices after proceedings have been commenced. (See section 12.)

**3.—(1.)** For the purposes of this Act—  
 The expression "trade mark" means a trade mark registered in the register of trade marks kept under the Patents, Designs, and Trade Marks Act, 1883,<sup>1</sup> and includes any trade mark which, either with or without registration, is

<sup>1</sup> Definitions.  
<sup>46 & 47</sup>  
<sup>Vict. c. 57.</sup>

## MERCHANDISE MARKS ACT, 1887.

protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable:<sup>2</sup>

The expression "trade description" means any description, statement, or other indication, direct or indirect,

- (a) as to the number, quantity, measure, gauge, or weight of any goods, or
- (b) as to the place or country in which any goods were made or produced,<sup>3</sup> or
- (c) as to the mode of manufacturing or producing any goods, or
- (d) as to the material of which any goods are composed, or
- (e) as to any goods being the subject of an existing patent, privilege, or copyright,<sup>4</sup>

and the use of any figure,<sup>5</sup> word, or mark which, according to the custom of the trade, is commonly taken to be an indica-

tion of any of the above matters, shall be deemed to be a trade description within the meaning of this Act :

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act :

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise :

The expressions "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate.

The expression "name" includes any abbreviation of a name.

## MERCHANDISE MARKS ACT, 1887.

(2.) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3.) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which—

(a) are not a trade mark, or part of a trade mark, and

- (b) are identical with, or a colourable imitation of the name or initials of a person carrying on business in connexion with goods of the same description, and not having authorised the use of such name or initials, and
- (c) are either those of a fictitious person or of some person not bonâ fide carrying on business in connexion with such goods.

<sup>1</sup> By section 1 of the Merchandise Marks Act, 1862, the word trade mark for the purposes of that Act was taken to include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, and was not limited as in this section to registered marks or protected marks in British possessions or foreign states. Trade marks protected by law in any British possession or foreign state are now included by Orders in Council issued under the 103rd section of the Patents, Designs and Trade Marks Act, 1883. By section 64 of the last-mentioned Act, a trade mark must consist of or contain at least one of the following essential particulars :—

- (a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner : or

## MERCHANDISE MARKS ACT, 1887.

- (b) A written signature, or copy of a written signature, of the individual or firm applying for registration thereof as a trade mark: or
- (c) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.

<sup>2</sup> At present this provision extends to the following places, viz., Queensland, Belgium, France, Italy, The Netherlands, Norway, Portugal, Servia, Spain, Sweden, Switzerland, Brazil, Guatemala, Paraguay, San Domingo, United States of America, Uruguay and Tunis.

<sup>3</sup> See also section 18, where a trade description includes the name of a place.

<sup>4</sup> That is, goods falsely represented as subjects of existing patents, privilege, or copyright. Copyright works are only detained on importation when registered at the Customs under section 44 of the Customs Consolidation Act, 1876.

<sup>5</sup> The word "figure" here means a numeral. (See *Ex parte Stephens*, 3 Ch. D. 659.)

Forging  
trade  
mark.

**4.** A person shall be deemed to forge<sup>1</sup> a trade mark who either—

- (a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
- (b) falsifies any genuine trade mark,

whether by alteration, addition, effacement, or otherwise ;  
and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

<sup>1</sup> Penalties for forging or applying false marks to goods. (See section 3.) The burden of proof of consent of owner of the original mark is cast on the defendant, and one of the difficulties presented in proving fraudulent intent, as required by the Act of 1862, is thus removed.

**5.—(1).** A person shall be deemed to apply a trade mark or mark or trade description to goods who—

Applying marks and descriptions.

(a) applies it to the goods themselves ;  
or

(b) applies it to any covering,<sup>1</sup> label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture ; or

(c) places, encloses, or annexes any

## MERCHANDISE MARKS ACT, 1887.

goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

- (d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or mark or trade description.

(2.) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark, or mark, or trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

- (3.) A person shall be deemed to falsely



apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

<sup>1</sup> This, so far as the Customs are concerned, would not apply to boxes, bottles, or the like, imported empty with the intention of filling them with British goods, if it were apparent that the mark applied to the goods and not to the boxes.

The word "label" indicates a piece of paper, or some other thin substance, which is made to adhere to the goods to which it is applied, and includes any band or ticket.

**6.** Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things

Exemption of certain persons employed in ordinary course of business.

in this section mentioned to be done and proves—

- (a) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (b) That he took reasonable precautions against committing the offence charged; and
- (c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (d) That he gave to the prosecutor all the information in his power with

respect to the persons on whose behalf the trade mark, mark, or description was applied—

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.<sup>1</sup>

<sup>1</sup> It is also open to any defendant to prove, under section 2, that he acted without fraud.

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *primâ facie* be deemed to be a description of that country within the meaning of this Act,<sup>1</sup> and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section, the

Applica-  
tion of  
Act to  
watches.

expression "watch" means all that portion of a watch which is not the watch case.

<sup>1</sup> The British hall marks are, according to the evidence given before the select committee, usually taken by the public to indicate that the watch is of British manufacture. It will be seen that in the absence of a counter description on the watch itself, the description on the watch case shall always be held to describe the watch.

Mark on  
watch  
case.

8.—(1.) Every person who after the date fixed by Order in Council sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom), and in such a mode as may be from time to time directed by Order in Council.<sup>1</sup>

(2.) The declaration may be made before an officer of an assay office, ap-

pointed in that behalf by the office (which officer is hereby authorised to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in the Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.<sup>2</sup>

(3.) Every person who makes a false declaration for the purposes of this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence.

<sup>1</sup> By Order in Council, dated 28 November, 1887, the special hall marks on foreign watch cases of gold and silver are set out. There are special forms of shields for both gold and silver cases, within which the word "Foreign" is placed. The marks differ according to the hall at which they are affixed, and on the gold cases the carat value of the metal is given. (See p. 112.)

Watch cases with British hall marks imported with unmarked foreign works would be liable to seizure on importation. Watch cases with British hall marks imported alone would be seized, unless proved to be British returned goods and properly entered in accordance with 42 & 43 Vict. c. 21, s. 6.

<sup>2</sup> By Order in Council, dated 28 November, 1887, published in the London Gazette of the 9th December, 1887, a form of declaration is directed to be used. (See p. 115.)

Trade  
mark, how  
described  
in plead-  
ing.

**9.** In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Rules as  
to evi-  
dence.

**10.** In any prosecution for an offence against this Act,—

(1.) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.

(2.) In the case of imported goods, evidence of the port of shipment shall be *primâ facie* evidence of the place or country in which the goods were made or produced.<sup>1</sup>

<sup>1</sup> In the absence of evidence to the contrary the customs officers would regard goods coming,

from any foreign port to be the productions of that place, or of the country in which that place is situated, and Spanish wines coming from Hamburg would be liable to seizure, unless the marks contained a definite indication of the country of production.

**11.** Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act, which, if committed in the United Kingdom, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanour had been there committed.<sup>1</sup>

Punish-  
ment of  
accesso-  
ries.

<sup>1</sup> This section makes it an offence to cause any goods to be falsely marked abroad for the purpose of importation into this country.

**12.—(1.)** Where, upon information of an offence against this Act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant

Search  
warrant.

for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant<sup>1</sup> under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.

(2.) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found,



an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3.) Any goods or things forfeited under this section, or under any other provision of this Act, may be destroyed or otherwise disposed of, in such manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

<sup>1</sup> This is a new provision, and will much facili-

tate proceedings under this Act. The warrant is only to issue after information, and a summons or warrant of arrest has been issued. Information must be given on oath.

Extension  
of 22 & 23  
Vict. c. 17,  
to offences  
under this  
Act.

**13.** The Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanours," shall apply to any offence punishable on indictment under this Act, in like manner as if such offence were one of the offences specified in section one of that Act, but this section shall not apply to Scotland.

Costs of  
defence or  
prosecu-  
tion.

**14.** On any prosecution under this Act the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

Limita-  
tion of  
prosecu-  
tion.

**15.** No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next

after the first discovery thereof by the prosecutor, whichever expiration first happens.

16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold,<sup>1</sup> would be liable to forfeiture under this Act; be it therefore enacted as follows:

Prohibition on importation.

- (1.) All such goods,<sup>2</sup> and also all goods of foreign manufacture bearing any name or trade mark being or purporting<sup>3</sup> to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication<sup>4</sup> of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom,<sup>5</sup> and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876.<sup>6</sup>

39 & 40  
Vict. c. 36.

- (2.) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations<sup>7</sup> under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.
- (3.) The Commissioners of Customs may from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this sec-

tion, and the mode of verification of such evidence.

- (4.) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom,<sup>s</sup> that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.
- (5.) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
- (6.) The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise,

## MERCHANDISE MARKS ACT, 1887.

shall act under the control of the Commissioners of Her Majesty's Treasury.

- (7.) The regulations may provide for the informant reimbursing the Commissioners of Customs<sup>9</sup> all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
- (8.) All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal."<sup>10</sup>
- (9.) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.
- (10.) Section two of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section,<sup>11</sup> not being later than the first day of January one thousand eight hundred and eighty-eight,

<sup>46 & 47</sup>  
Vict. c. 55.

without prejudice to anything done  
or suffered thereunder.

<sup>1</sup> Under this section goods falsely marked are equally liable to seizure, whether imported for sale or not.

<sup>2</sup> That is, all goods having applied to them forged trade marks, or false or defective trade descriptions, and all goods bearing the name of any *place* in this country, the latter being a false description as to the origin of the goods under section 3, sub-head (b).

<sup>3</sup> The word "purporting" is understood as referring to any name or names reasonably suggesting a British manufacturer, dealer, or trader, without regard to the fact whether the name is known or not, or to a trade mark, not being merely a matter of decoration or ornament, which reasonably suggests itself as British by containing English wording, or national devices, or figures distinctly indicating British manufacture.

<sup>4</sup> As to definite indication, see p. 24, and see also section 18.

<sup>5</sup> Goods having applied to them British trade marks, or marks which purport to be British trade marks, can only be imported when the goods bear, in addition to the mark, a definite indication as to the country in which they were made. Should the trade mark be illegally used by a person to whom it does not belong, or be an imitation of a genuine trade mark, it would be a falsely applied

## MERCHANDISE MARKS ACT, 1887.

mark under section 5, sub-section 3, or a forged trade mark under section 4.

<sup>6</sup> Section 42 of the Customs Consolidation Act, 1876, contains a table of prohibitions, and all goods imported contrary thereto are forfeited to the Crown. By section 203 of that Act all the contents of a package containing prohibited goods are also forfeited; and any person importing prohibited goods is by section 186 liable to a penalty of 100*l*.

<sup>7</sup> The regulations were issued by the Board of Customs on the 1st December, 1887. (See p. 67.)

<sup>8</sup> Many American or colonial towns bear similar names to towns in this country—in this case the country in which such towns are situated must be given, or well-known indications by letters such as U. S. A. in the case of goods coming from America.

<sup>9</sup> The regulations deal very fully with the security to be required from an informant, which has been considered necessary to check mischievous or spiteful acts on the part of informers, or of frivolous matters being made excuses for interference with ordinary trading transactions. (See p. 71.)

<sup>10</sup> Published in the London Gazette, 2nd December, 1887, and the Board of Trade Journal for December, 1887.

<sup>11</sup> From the 1st January, 1888.

Implied  
warranty  
on sale of  
marked  
goods.

**17.** On the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has



been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

**18.** Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added

Provisions  
of Act as  
to false  
descrip-  
tion not to  
apply in  
certain  
cases.

to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.<sup>1</sup>

<sup>1</sup> Trade descriptions which are generally taken to indicate a particular class or method of manufacture may be applied to goods, but if such descriptions include the name of a place, the place or country in which they were manufactured must be stated. Looking at the wording of section 3, by which any indication as to the place or country in which foreign articles are made or produced may be direct or *indirect*, it would appear that a trade description in the English language which could in any way be taken to convey the idea that the goods to which it is applied are of British make, would require a counter-statement to show that the goods were made abroad. Similarly, words such as "Mode de Paris," which might be taken to indicate a French origin, would be illegal if the goods were of German make. This section, which lays down that the indication as to origin is to be placed immediately before or after the name of the place or country indicated in the trade description, and in an equally conspicuous manner, and with a statement such as "made in Germany," would seem to be an interpretation of the words "definite indication" mentioned in

section 16, sub-section 1, except that under that section the "statement" that the goods were made or produced there is not required.

**19.**—(1.) This Act shall not exempt <sup>Savings.</sup> any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2.) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Act.

(3.) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who bonâ fide acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

**20.** Any person who falsely represents that any goods are made by a <sup>False representation as to</sup>

Royal  
Warrant.

person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family, or any Government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.<sup>1</sup>

<sup>1</sup> By section 5 of the 42 & 43 Vict. c. 21,

“all articles bearing or having affixed to them any stamp, name, writing, or other device, implying or tending to imply any sanction or guarantee by the Customs, or any other department of the Government”

are prohibited to be imported.

And see also sect. 106 of the 46 & 47 Vict. c. 57, by which a penalty not exceeding 20*l.* may be imposed on summary conviction on any person assuming or using in connection with any trade, business, calling, or profession, the Royal Arms, or arms so nearly resembling the same as to be calculated to deceive, without the authority of her Majesty, the Royal Family, or of any Government department.

Applica-  
tion of Act  
to Scot-  
land.

**21.** In the application of this Act to Scotland the following modifications shall be made:—

The expression “Summary Jurisdiction Acts” means the Summary Procedure Act, 1864, and any Acts amending the same.

The expression "justice" means sheriff,  
 The expression "court of summary jurisdiction" means the Sheriff Court, and all jurisdiction necessary for the purpose of this Act is hereby conferred on sheriffs.

**22.** In the application of this Act to Ireland, the following modifications shall be made:—

Applica-  
 tion of Act  
 to Ireland.

The expression "Summary Jurisdiction Acts," means, so far as respects the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

14 & 15  
 Vict. c. 93.

The expression "court of summary jurisdiction" means justices acting under those Acts.

**23.** The Merchandise Marks Act, 1862, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the

Repeal of  
 25 & 26  
 Vict. c. 88.

## MERCHANDISE MARKS ACT, 1887.

corresponding provision of this Act; provided that this repeal shall not affect—

- (a) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor
- (b) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act; nor
- (c) any right, privilege, liability, or obligation acquired, accrued, or incurred under any enactment hereby repealed.

## APPENDIX.

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### REGULATIONS *made by the Commissioners of Customs under Section 16 of the Merchandise Marks Act, 1887.*

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Whereas by the Merchandise Marks Act, 1887 (hereinafter called "the Act"),

After various provisions against the sale, or exposure for sale, or possession for sale, trade, or manufacture of goods with forged trade marks, or false trade descriptions, or trade marks falsely applied to them;

And after defining (amongst other things) the expression "trade mark" in manner therein set forth, with reference to "The Patents, Designs and Trade Marks Act, 1883," and the law of indicated British Possessions and Foreign States;

And after defining the expression "trade description" as any description, statement, or other indication, direct or indirect, as to number, quantity, measure, gauge or weight, of goods, as to place or country in which any goods were made or produced, as to the mode

of manufacturing or producing any goods, or as to the material of which any goods are composed, or as to any goods being the subject of any existing patent, privilege or copyright; And after defining the expressions "false trade description," and "goods," "apply," and "falsely apply;"

It is provided by section 16 that,

- (i.) All such goods as above mentioned, and
- (ii.) All goods of foreign manufacture, bearing any name or trade mark, being or purporting to be, the name or trade mark of any manufacturer, dealer, or trader, in the United Kingdom, unless such name or mark be accompanied by definite indication of the country in which such goods were made or produced,

shall be prohibited to be imported, and, subject to the provisions of the said section, shall be included among goods prohibited to be imported, as if they were specified in section 42 of "The Customs Consolidation Act, 1876."

And whereas by section 18 of the Act, after authorizing the continued use of trade descriptions lawfully and generally applied to goods of the particular class, or manufactured by a particular method to indicate such class or method, it is provided that, where such trade description includes the name of a place or country calculated to mislead as to where the goods were actually made or produced,



such goods not having been actually made or produced there, the said reciting section should not apply (and, consequently, goods so marked would be prohibited), unless there be added to the trade description, immediately before or after the name of the place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

And whereas it is also provided, by the said section 16, that the Commissioners of Customs (hereinafter called "the Commissioners"), may, from time to time, make, revoke and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited as hereinbefore mentioned, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of the said section, and the mode of verification of such evidence.

And it is further provided by the said last-mentioned section:—

That before detaining goods or taking proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners may require that such regulations as aforesaid shall be complied with,

and satisfy themselves as to the liability of the goods to forfeiture.

That such regulations may apply to all goods, the importation of which is prohibited by the said section, or different regulations may be made respecting different classes of such goods.

And also that the regulations may provide for the informant reimbursing the Commissioners all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

And it is also provided by the said section, that section 2 of the Revenue Act, 1883, shall be repealed from a day to be fixed by regulations under the said reciting section, such day not being later than the 1st day of January, 1888, without prejudice to anything done or suffered thereunder.

And whereas section 2 of the Revenue Act, 1883, is the law under and by virtue of which goods of foreign manufacture infringing the proprietary rights of British subjects in names, addresses and trade marks, or bearing or having upon them, under certain conditions, the name of a place in or a part of the United Kingdom, are, at the present time, detected and stopped by officers of Customs acting on their own observation and responsibility, under directions laid down by the Commissioners, and without the require-

ment of previous information, security, or other conditions.

Now, therefore, the Commissioners, under and by virtue of the hereinbefore recited power in that behalf, hereby make and require to be complied with the following regulations, viz. :—

1. Goods prohibited to be imported as hereinbefore recited, having applied to them forged trade marks, false trade descriptions, or marks, names, or descriptions otherwise illegal, which, upon examination, are detected by the officers of Customs, are to be detained by them without the requirement of previous information.

2. In giving information with a view to detention an informant must fulfil the following conditions, viz. :—

- (i) He must give to the collector or superintendent, or the chief officer of Customs of the port (or sub-port) of expected importation, notice in writing, stating,
  - the number of packages expected, as far as he is able to state the same ;
  - the description of the goods by marks or other particulars sufficient for their identification ;
  - the name or other sufficient indication of the importing ship ;
  - the manner in which the goods infringe the Act ;
  - the expected day of the arrival of the ship.
- (ii) He must deposit with the collector or other officer as aforesaid a sum sufficient, in the opinion of that officer, to cover any addi-

tional expense which may be incurred in the examination required by reason of his notice.

3. If, upon arrival and examination of the goods, the officer of Customs is satisfied that there is no ground for their detention, they will be delivered. If he is not so satisfied, he will decide either to detain the goods, as in a case of detention upon ordinary examination, or to require security from the informant, for reimbursing the Commissioners or their officers all expenses and damages incurred in respect of the detention made on his information and of any proceedings consequent thereon.

4. The security thus required must be an immediate *ad valorem* deposit of ten pounds per cent. on the value of the goods, as fixed by the officer from the quantities or value shown by the entry; and, also, subsequently, a bond to be completed within four days in double the value of the goods, with two approved sureties. The *ad valorem* deposit will be returned upon completion of the bond, and will not be required if, as an alternative where time permits, the informant prefers to give a like bond before examination, upon estimated value of the goods declared to by him under statutory declaration. If the security is not duly given as above required, there will be no further detention of the goods.

5. In the above regulations the words "officer of Customs" mean an officer acting under general or special direction of the Commissioners, and the

words "value of the goods" mean value irrespective of duty.

6. The "notice" and "bond" required as above shall be in the forms contained in the Schedule to these regulations, or in such other forms as the Commissioners may from time to time order and direct.

7. The security taken under these regulations will be given up at the times following, that is to say:

Where given before examination, and if no detention, forthwith.

Where given on detention:—

If the forfeiture is completed, either by lapse of time or ultimate condemnation by a court of justice, then on such completion of forfeiture.

If the forfeiture is not completed, then

If the goods are released by the Commissioners, and no action or suit has been commenced against them, or any of their officers, in respect of the detention, then at the expiration of three months from the time of detention; or, if the goods are released for failure of proceedings taken for the forfeiture and condemnation thereof upon information under section 207 of "The Customs Consolidation Act, 1876," and no action or suit has been commenced against the Commissioners, or any of their officers, in respect of the detention, then at the expiration

## APPENDIX.

of three months from the trial of such information.

If within such periods as aforesaid any such action or suit as aforesaid has been commenced, then upon the ultimate conclusion of such action or suit, and the fulfilment of the purpose for which the security was given.

8. These regulations apply to transhipment and transit goods, as well as to goods landed to be warehoused, or for home consumption.

9. The 1st day of January, 1888, is by these "regulations," fixed as the day from which section 2 of the "Revenue Act, 1883," shall be repealed, subject to the terms of the recited Act: and these regulations will take effect from the date of such repeal.

CHARLES DU CANE,	} Commissioners of H.M. Customs.
H. MURRAY,	
HORACE SEYMOUR,	

*Custom House, London,*  
*1st December, 1887.*

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## SCHEDULE.

## (NOTICE.)

## THE MERCHANDISE MARKS ACT, 1887.

To the collector, superintendent, or chief  
officer of Customs at the \*port of

\* Or sub-  
port.

I hereby give you notice that the undermen-  
tioned goods, that is to say,<sup>1</sup> are about to be im-  
ported into your port on or about the        day  
of        next, in the<sup>2</sup>        from

That such goods are liable to detention and for-  
feiture being<sup>3</sup>

That Mr.        of        and Mr.        of  
are prepared to become my sureties in  
such bond as may be required upon detention of  
the goods.

And I request that the said goods may be de-  
tained and dealt with accordingly,

Dated this        day of        , 188 .

A. B.

(or agent for)

*Note.*—Mr.        refers to        his bankers  
[or solicitors], and Mr.        to        his bankers  
[or solicitors] as to his sufficiency for the penalty of  
the bond.

<sup>1</sup> Describe the goods, number of packages, marks used, and any other particulars necessary for their identification.

<sup>2</sup> Describe the ship, and give name or indication.

<sup>3</sup> State how the goods infringe the Act, and if the infringement is one as to a forged trade mark protected in a British Possession or Foreign State, state the Possession or State, or if the infringement is one as to place or country of origin, state the name of the place or country falsely used.

## (BOND.)

## THE MERCHANDISE MARKS ACT, 1887.

Know all men by these presents, that we,  
 and            are held and firmly bound unto  
 Our Sovereign Lady Victoria, by the Grace of  
 God of the United Kingdom of Great Britain  
 and Ireland Queen, Defender of the Faith,  
 in the sum of            pounds to be paid to our  
 said lady the Queen, her heirs or successors.  
 For which payment well and truly to be  
 made we bind ourselves, jointly and severally,  
 our heirs, executors, and administrators, firmly  
 by these presents. Sealed with our seals.  
 Dated this            day of            in the year  
 of our Lord, one thousand eight hundred  
 and

Whereas the above-named            having by  
 a notice dated the            day of            in-  
 formed the collector of Customs at            that  
 the undermentioned goods, that is to say,  
 were about to be imported into the port of  
 contrary to section 16 of the Merchandise Marks  
 Act, 1887, and requested that the said goods should  
 be detained and dealt with accordingly. And  
 whereas the said goods duly arrived in the said  
 port on the            day of            last, and are  
 now detained pursuant to the said notice. Now  
 the condition of this obligation is such that  
 if the said            his executors or administra-  
 tors, shall well and effectually indemnify, save  
 harmless, and keep indemnified, Her Majesty, her



REGULATIONS UNDER SECTION 16.

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heirs and successors, and all her and their officers of Customs, and their executors or administrators, from and against all loss or damage, payment or payments, and all costs and expenses which her said Majesty, her heirs or successors, and her and their officers of Customs, their executors or administrators, shall or may sustain or incur by reason or on account of any detention of the said goods following upon the information contained in such notice and any proceedings consequent upon such detention, then this obligation shall be void, or otherwise shall be and remain in full force and virtue.

Signed, sealed, and }  
delivered. }

GENERAL ORDER *issued by the Commissioners of Customs for the carrying out of the Merchandise Marks Act, 1887.*



CUSTOM HOUSE, LONDON,  
22nd December, 1887.

SIR,

1. As a sequel to G. O.  $\frac{81}{1887}$  you will receive herewith a copy of the regulations made by the Board under section 16 of the Merchandise Marks Act, 1887, published in the London Gazette of the 2nd of December, 1887, and in the Board of Trade Journal for the present month.

2. You will observe that the regulations do two things :

Twofold  
object of  
Regula-  
tions.

- (i.) They direct that goods prohibited by the Act which are detected by the officers upon examination (that is to say, upon ordinary examination for revenue purposes), are to be detained without previous information.
- (ii.) They provide what is to be done in cases where prohibited importation, and the ground of such prohibition, are matters not of detection in the ordinary way, but of information by an informant.

3. You will require guidance as to what goods, in the opinion of the Board, the officers ought to detect as mentioned in sub-paragraph (i); and as to the action to be taken by officers, after information, as mentioned in sub-paragraph (ii).

General points on which guidance is necessary.

4. The Act extends so largely the area of prohibited goods, for the benefit not only of British subjects, but also of the subjects and citizens of foreign states, that as to a considerable proportion of goods liable to prohibition on importation, the officers cannot be expected to act without some guidance by information. It must not be, however, held or worked so as in any way to diminish the care at present taken by the officers in respect to "British marks," involving names of British places, or indications of British manufacture, and to this extent, at least, the officers must continue to act without previous information.

As to the scope of the Act with reference to "British marks."

5. You will observe that names or trade marks of British manufacturers, dealers, or traders on imported foreign goods (section 16, sentence beginning "all goods of foreign manufacture") are to be only admissible if distinctly qualified, not merely, as heretofore, by words showing manufacture abroad, but by a definite indication of the country in which the goods were made or produced; and this same principle is contained even more emphatically, in section 18 of the Act, as regards lawful and general "trade descriptions," which include the name of a place or country.

Reference to particular provisions as to place or country of origin.

6. The goods, therefore, which the Board distinctly expect the officers themselves to detect

Classification of goods

especially indicated for detection without information.

upon ordinary examination, and without previous information, will be as follows, viz. :—

Class (a). Goods of foreign make or produce, by whomsoever imported, having applied to them, either,

A name or trade mark which is, or purports to be, the name or trade mark of a manufacturer, dealer, or trader in the United Kingdom; or a trade description which indicates particular class or method of manufacture, and includes the name of a place in or a part of the United Kingdom, and is thereby calculated to mislead as to the place of the manufacture or production of goods which have not been manufactured or produced in the United Kingdom ;

unless such name, mark, or description is accompanied by a definite indication of the place or country in which the goods were made or produced, that is to say, an addition immediately before or after the said name, mark or description, in an equally conspicuous manner therewith, of the name of the place or country in which the goods were actually made or produced, with, in the case of a trade description including name of place, a statement that they were made or produced there.

Class (b). Goods of foreign make or produce, by whomsoever imported, having applied to them any description, figures, words or marks, or arrangement or combination thereof, so as to constitute, by being or including, either

expressly or by reference, the name of a place in or a part of the United Kingdom, or in any other way, a statement or other indication, direct or indirect, that the goods were made or produced in the United Kingdom.

7. On the above classification you will note this paragraph and the paragraphs to 10 inclusive.

It will obviously not be in the power of the officers, nor are they expected to decide whether goods falling within class (a) were actually made or produced in the country from which they come; but, in practice, it will be sufficient if the officers satisfy themselves that the name of *some* foreign country, or of some place in *a* foreign country is applied to the goods in a manner equally indelible or irremovable, and as equally conspicuous, as the name or trade mark itself, and in close proximity to it.

As to the requirement of a definite indication of place or country of origin.

8. The word "purports," also in (a), is to be understood as referring to any name or names reasonably suggesting a British manufacturer, dealer, or trader, without regard to the fact of whether the name is or is not known to the officer; or as referring to a trade mark not being merely matter of decoration or ornament, which reasonably suggests itself as British by containing English wording, or national devices or figures distinctly indicating British manufacture.

As to the meaning of the word "purports."

9. The words "a trade description which indicates a particular class or method of manufacture, and includes the name of a place in or a part

As to "trade description" including

name of place calculated to mislead.

of the United Kingdom and is thereby calculated to mislead" mean such terms as Kidderminster Carpets, Windsor Soap, "Balbriggan" on Hosiery, or "Shetland" on Shawls, and the like, which, although they might be held to be merely phrases descriptive of method of manufacture, are yet calculated to mislead as to place of origin.

As to other, less definite, inscriptions, indicating in any way make or production in the United Kingdom.

10. Class (b) refers to and includes such inscriptions as "present from such and such a place" and the like; or, even without a name, any phrases, words, language or devices, which state or indicate, directly or indirectly, make or production in the United Kingdom; and the words "by reference" mean that "Irish," for instance, is equivalent to "of Ireland." Any goods bearing such marks will be detained, and you will refer the matter to the Board.

Classification, generally, of goods prohibited by the Act.

11. Passing from the goods thus specially mentioned, those generally prohibited by the Act to be imported may be summarised as follows:—

(Head i.) Goods, whether of foreign make or produce, or British goods brought back, having a false trade description as to name or initials, or a forged trade mark applied to them.

(Head ii.) Like goods having applied to them a false trade description as to the place or country in which they were made or produced; or as to number, quantity, measure, gauge or weight, mode of manufacture or production, or material of which composed;

or as to the goods being the subject of any existing patent, privilege, or copyright.

A false trade description is a description or indication, whether original or by addition, effacement or otherwise, and whether by figures, words, or marks, or any arrangement or combination thereof, directly or indirectly false in a material respect.

12. With regard to head (i). This is the protection of a manufacturer, dealer, or trader against the fraudulent or unfair use of his name or trade mark by any other person. It would not be possible for officers to enter into the examination of all names and marks in respect to their use as between various importers. At the same time, a manufacturer, dealer, or trader who has reason to believe that his name or trade mark is one not unlikely to be imitated, so as to constitute a false trade description, or forged trade mark, is entitled to ask that, without the requirement of special information, such description or mark may, upon any importation, be stopped.

Scope of head (i).

13. For this purpose the Board sanction the system of registration of names or marks in a way *similar* to that which has hitherto existed; and a manufacturer, dealer, or trader may register his name or mark at such port or ports as he desires. In respect of names or marks so registered, it will be the duty of the officers, at the particular port or ports, to prevent the delivery of goods to which such names or marks are applied, unless the delivery

Registration for this purpose.

is authorised by the registered proprietor. Apart from names or marks as to which such registration exists, the officers are not expected to examine goods with reference to head (i).

Who may register, and on what terms.

14. Any manufacturer, dealer, or trader, whether British or foreign, may register his name or mark; but you may refuse registration to any name or mark which you consider to be of a character too indefinite or indistinct for officers to recognise, referring to the Board in any case of doubt. An applicant for registration must prove his proprietorship of the name or mark by declaration; and if, in order to avoid delay, he desires to do so, he may appoint an agent to give authority for delivery of his goods, and prove (also by declaration) the appointment of such agent.

See paragraph 32.

Registration to be subject to provisions mentioned in paragraph 6.

15. You must understand, very distinctly, that the use by the British manufacturer, dealer, or trader of even his *own* name on foreign goods, and the use by *any* manufacturer, dealer, or trader, on like goods, of words, figures, or marks of any kind stating or indicating, directly or indirectly, make or production in the United Kingdom, are prohibited unless the qualifying conditions specified in paragraph 6 are complied with. You must, therefore, clearly explain to every person registering a name or mark which involves any such statement or indication, as will probably often be the case, that, while the name or mark will be guarded by such registration, it will not be rendered admissible unless duly qualified, as the law may require, in every case. The Register at.



your port under the law now expiring will cease to be operative with the expiry of that law.

16. As regards head (ii) ; if (apart from the goods specially mentioned in paragraph 6, and notwithstanding that classification) the officers should in any case upon the ordinary examination for revenue purposes, detect anything constituting an infringement of any of the prohibitions of the Act as thus set forth, you will detain such goods and refer the matter to the Board.

Notwithstanding classification in paragraph 6, any other infringement detected is to be followed by detention.

17. Such detection by officers may happen, for instance, as to number, quantity, measure, gauge, or weight ; while, on the other hand, as to mode or material of manufacture, as to any patent, privilege, or copyright,<sup>1</sup> or foreign trade marks, the officers, upon ordinary examination, may probably, in the absence of special knowledge, fail in detecting false descriptions or forged trade marks.

Indication as to where such detection may happen.

18. False descriptions as to place of origin affecting the interests of " British Possessions " or " Foreign States " are matters which, unaided by information, officers will not generally be expected to trace ; but wherever they observe goods conspicuously known as the usual product of a particular place or country, and marked with that name, shipped from a port in another country altogether, as, for instance, wine marked " Xeres " or " Spanish " from Belgium, or cigars marked " Havana " from Germany, such goods may, in

Directions as to question of place or country of origin.

<sup>1</sup> As to copyright, this instruction in no way affects the practice under sections 42 and 44 of " The Customs Consolidation Act, 1876."

the absence of proof of make or produce at the place or in the country named on them, be properly detained.

Action upon information—two stages of such action.

19. Some directions (beyond what is shown in the regulations) are desirable as to your action upon "information," and you will observe that there are two stages of procedure in this, viz., one up to and including the arrival and examination or identification of the goods; and the other after the examination or identification.

As to special examination of goods in such case.

20. With regard to the first stage—the two points for consideration are, whether any, and if so what, special examination of the goods should be made, and what deposit should be taken to cover the expense of such examination, if it is made.

On what it will depend.

21. The character and extent of examination will require careful discretion on your part, and will depend on the manner in which the goods are alleged in the notice to infringe the Act. An indication has been given you above as to what the Board consider that officers can detect and what they cannot, upon ordinary examination; and this will furnish you with a guide as to what they may be able to trace upon fuller examination after information.

Course, where such examination would not be serviceable.

22. Wherever, in accordance with such indication, you are of opinion that the officers could not, even on fuller examination, discover whether the goods infringe the Act, you need not order a special examination, and consequently you will not require any deposit in respect of such examina-

tion, but you may at once order detention of the goods as if the officers had seen cause to detain them, and proceed to require security, in conformity with directions given in paragraph 29 of this Order.

23. Wherever, on the other hand, you are of opinion that a fuller examination than that ordinarily directed for revenue purposes may reasonably enable the officers to discover whether or not there is the infringement alleged, as, for instance, by careful weighing, measuring, counting, or gauging, you will direct that such an examination shall take place, examining as to free goods, for this purpose, not less than twice the usual number of packages, and in the case of goods imported in bulk, such as machinery, and the like, treating each piece imported as a package.

Course where such examination would be serviceable.

24. Assuming examination to be ordered by you in accordance with the lines above indicated, you will take, as a deposit to cover the additional expense of this examination, such sum as you may think necessary, having regard to the nature of the goods, and to the number of packages which, according to the informant's knowledge, will have been stated in the notice.

Deposit to cover such examination.

25. The case of false description as to place of origin affecting the interests of "British Possessions" or "Foreign States" is here again one for special mention. As above stated, it is one which, as a rule, officers cannot be expected to detect without information; but, for an officer examining upon information, the following rules may be

Special rules in such examination in regard to place or country of origin as affecting British Posses-

sions or  
Foreign  
States.

laid down, viz., if it is ascertained that the name of place or country complained of is not applied to the goods at all, or, if applied, is accompanied by a definite indication or addition, as contemplated by the Act, of make or production elsewhere, the officer may be satisfied that there is no ground existing to justify the notice received; but if the name complained of is found to be applied to the goods, and is the name of a country, or of a place in a country, not the country of the port of shipment, the officer may, in the absence of proof of make or produce at the place or in the country named on them, be satisfied that the alleged infringement clearly exists.

As to  
British  
Posses-  
sions and  
Foreign  
States to  
which the  
provisions  
in relation  
to forged  
trade  
marks  
apply.

26. In the case of a notice alleging the application of a forged trade mark where the mark is one protected in a British Possession or Foreign State, such a notice will only be good, and need only be accepted by you, if it relates to possessions or states included in the definition of trade marks.

Up to the present time the British Possession and Foreign States so included are,

British Possession . . . Queensland.

	}	Belgium.
		France.
		Italy.
		The Netherlands.
Foreign States in		Norway.
Europe . . . . .		Portugal.
		Servia.
		Spain.
		Sweden.
		Switzerland.

In N. and S. America and the W. Indies.	}	Brazil. Guatemala. Paraguay. San Domingo. The United States of America. Uruguay.
In Africa . . . .		Tunis.

27. As to transshipment and transit goods ; Transship-  
ment and  
transit. where information and "notice" relate to these goods, you will deal with them exactly as if they were goods for home use. Apart from information you will not, as regards the ordinary examination of such goods for revenue purposes, examine more packages than at present ; but the Board, in addition to the existing rules as to transshipment and transit goods, direct that, as to all such goods, no marks of any kind or description shall be allowed to be applied to them in this country, and you will see that this is strictly carried out in your port.

28. As to goods examined upon information Rules as  
to special  
examina-  
tion gene-  
rally. generally, you will be guided by the following rules. If upon examination the officer is satisfied that there is no ground existing to justify the notice received, he will pass the goods ; if he is satisfied that the alleged infringement clearly exists, he will detain the goods as in a case of detention upon ordinary examination : but in cases where the officer is not so satisfied, and in cases where you may have considered that official

examination cannot test the point, you will order the detention of the goods at the risk of the informant, and thus arrive at the second stage of the procedure upon information, viz., the taking of security.

As to security where detention ordered.

29. You will observe that (except in cases where the informant prefers to give a bond, and where time allows such a step to be taken before the goods arrive and are examined), there are two things to be done in taking security—first, to take an *ad valorem* money deposit to cover the possibility of the bond not being completed, and, secondly, to see that the bond is completed, after which you will return the deposit. The amount of both the deposit and the bond will depend on the value of the goods.

Inquiries as to sufficiency of sureties.

30. The form of Notice given in the schedule to the Regulations requires a statement of the names of persons proposed as sureties. As to the sufficiency of these you will make inquiries in the usual way, and have the bond completed as in other transactions.

As to goods after security taken, and as to delivery up of security.

31. The security having once been taken, the goods will, without further special examination, remain in charge, and the Regulations contain definite provisions as to when, in the various contingencies that may arise, the security will be delivered up.

Supply of forms.

32. A form is annexed of the Declaration mentioned in paragraph 14; and also of a Bond, when it is preferred to give one before examination, as mentioned in paragraph 29. Supplies of these

forms, and of those given in the Schedule to the Regulations, can be obtained in the usual way.

33. A General Order as to watch cases and watches will shortly be issued; and further directions will be given, from time to time, as decisions are arrived at, under paragraphs 9 and 10, and paragraphs 16, 17, and 18 of this Order.

I am, sir, your obedient servant.

E. GOODWYN.

The Collector at

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MERCHANDISE MARKS ACT, 1887

(50 & 51 VICT. c. 28).

*Declaration on Registration under Paragraph 13*

*of General Order*  $\frac{99}{1887}$

PORT OF

I <sup>1</sup> hereby declare that <sup>2</sup> <sup>3</sup> the Proprietor, of <sup>4</sup>, viz. :— which <sup>5</sup> expect to be applied to goods imported, from time

<sup>1</sup> Full name and address of declarant.

<sup>2</sup> "I" or "I and my partners, trading as Messrs.," or, "such and such a company, of which I am the representative official," or "so and so of such and such a place abroad whom I represent in this country."

<sup>3</sup> "Is" or "are."

<sup>4</sup> "The following name as a trade description," or "the following trade mark," or "the following name as a trade description and trade mark."

<sup>5</sup> "I" or "we."

to time, at this Port; and that <sup>6</sup> have appointed Mr. <sup>7</sup> of to be <sup>8</sup> agent, to give authority for the delivery of such goods.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declaration Act, 1835.

(Signed)

Declared this                    day of }  
                   188    , at                    }  
                   before me

*A Commissioner to administer oaths, &c.*

*N.B.—Registration in pursuance of this declaration is subject to the provisions of the Act which forbid the importation, by a registered proprietor, even of his own goods which bear, in name or mark, any statement or indication, direct or indirect, of make or produce in the United Kingdom, unless qualified as the Act requires.*

<sup>6</sup> "I" or "we."

<sup>7</sup> This portion as to appointment of agent may be erased, where such appointment is not desired.

<sup>8</sup> "My" or "our"

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KNOW all men by these presents that we                    are held and firmly bound unto our Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, in the sum of                    pounds to be paid to our said Lady the Queen, her heirs or successors, for which payment well and truly to be made we bind ourselves jointly and severally, our heirs,



GENERAL ORDER.

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executors and administrators, firmly by these presents. Sealed with our seals. Dated this day of in the year of our Lord one thousand eight hundred and eighty .

WHEREAS the above named has by a notice dated the day of informed the collector of Customs at that the undermentioned goods, that is to say, are about to be imported into the port of contrary to section 16 of the Merchandise Marks Act, 1887, and has requested that the said goods shall be detained and dealt with accordingly. Now the condition of this obligation is such that if the said his executors or administrators, shall well and effectually indemnify, save harmless, and keep indemnified her Majesty, her heirs and successors, and all her and their officers of Customs and their executors or administrators, from and against all loss or damage, payment or payments, and all costs and expenses which her said Majesty, her heirs or successors, and her or their officers of Customs, their executors and administrators, shall or may sustain or incur by reason or on account of any detention or delay in the delivery of the said goods, following upon the information contained in such notice and any proceedings consequent upon such detention or delay, then this obligation shall be void, otherwise shall be and remain in full force and virtue.

Signed, sealed and delivered }

## INTERNATIONAL ARRANGEMENTS.



## I.

INTERNATIONAL CONVENTION FOR THE PROTECTION  
OF INDUSTRIAL PROPERTY.

*Signed at Paris, March 20, 1883.*

[*Ratifications exchanged at Paris, June 6, 1884.*]

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*(Official Translation.)*

His Majesty the King of the Belgians, His Majesty the Emperor of Brazil, His Majesty the King of Spain, the President of the French Republic, the President of the Republic of Guatemala, His Majesty the King of Italy, His Majesty the King of the Netherlands, His Majesty the King of Portugal and the Algarves, the President of the Republic of Salvador, His Majesty the King of Servia, and the Federal Council of the Swiss Confederation,

Being equally animated with the desire to secure by mutual agreement, complete and effectual protection for the industry and commerce of their respective subjects and citizens, and to provide a guarantee for the rights of inventors, and for the loyalty of commercial transactions, have resolved

to conclude a convention to that effect, and have named as their plenipotentiaries, that is to say:—  
(*Here follow the appointments of the plenipotentiaries.*)

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

#### ARTICLE I.

The Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, Holland, Portugal, Salvador, Servia, and Switzerland constitute themselves into a union for the protection of industrial property.

#### ARTICLE II.

The subjects or citizens of each of the contracting states shall, in all the other states of the union, as regards patents, industrial designs or models, trade marks and trade names, enjoy the advantages that their respective laws now grant, or shall hereafter grant, to their own subjects or citizens.

Consequently they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the formalities and conditions imposed on subjects or citizens by the internal legislation of each state.

#### ARTICLE III.

Subjects or citizens of states not forming part of the union, who are domiciled or have industrial or commercial establishments in the territory of any

of the states of the union, shall be assimilated to the subjects or citizens of the contracting states.

#### ARTICLE IV.

Any person who has duly applied for a patent, industrial design or model, or trade mark in one of the contracting states, shall enjoy, as regards registration in the other states, and reserving the rights of third parties, a right of priority during the periods hereinafter stated.

Consequently, subsequent registration in any of the other states of the union before expiry of these periods shall not be invalidated through any acts accomplished in the interval, either, for instance, by another registration, by publication of the invention, or by the working of it by a third party, by the sale of copies of the design or model, or by use of the trade mark.

The above-mentioned terms of priority shall be six months for patents, and three months for industrial designs and models and trade marks. A month longer is allowed for countries beyond sea.

#### ARTICLE V.

(Relates only to patents.)

#### ARTICLE VI.

Every trade mark duly registered in the country of origin shall be admitted for registration, and protected in the form originally registered in all the other countries of the union.

That country shall be deemed the country of

origin where the applicant has his chief seat of business.

If this chief seat of business is not situated in one of the countries of the union, the country to which the applicant belongs shall be deemed the country of origin.

Registration may be refused if the object for which it is solicited is considered contrary to morality or public order.

#### ARTICLE VII.

The nature of the goods on which the trade mark is to be used can, in no case, be an obstacle to the registration of the trade mark.

#### ARTICLE VIII.

A trade name shall be protected in all the countries of the union, without necessity of registration, whether it form part or not of a trade mark.

#### ARTICLE IX.

All goods illegally bearing a trade mark or trade name may be seized on importation into those states of the union where this mark or name has a right to legal protection.

The seizure shall be effected at the request of either the proper public department or of the interested party, pursuant to the internal legislation of each country.

#### ARTICLE X.

The provisions of the preceding Article shall apply to all goods falsely bearing the name of

## APPENDIX.

any locality as indication of the place of origin, when such indication is associated with a trade name of a fictitious character or assumed with a fraudulent intention.

Any manufacturer of, or trader in, such goods, established in the locality falsely designated as the place of origin, shall be deemed an interested party.

## ARTICLE XI.

The high contracting parties agree to grant temporary protection to patentable inventions, to industrial designs or models, and trade marks, for articles exhibited at official or officially recognized international exhibitions.

## ARTICLE XII.

Each of the high contracting parties agrees to establish a special Government Department for industrial property, and a central office for communication to the public of patents, industrial designs or models, and trade marks.

## ARTICLE XIII.

An international office shall be organised under the name of "Bureau International de l'Union pour la Protection de la Propriété Industrielle" (International Office of the Union for the Protection of Industrial Property).

This office, the expense of which shall be defrayed by the Governments of all the contracting states, shall be placed under the high authority of the Central Administration of the Swiss Con-

federation, and shall work under its supervision. Its functions shall be determined by agreement between the states of the union.

#### ARTICLE XIV.

The present convention shall be submitted to periodical revisions, with a view to introducing improvements calculated to perfect the system of the union.

To this end conferences shall be successively held in one of the contracting states by delegates of the said states. The next meeting shall take place in 1885 at Rome.

#### ARTICLE XV.

It is agreed that the high contracting parties respectively reserve to themselves the right to make separately, as between themselves, special arrangements for the protection of industrial property, in so far as such arrangements do not contravene the provisions of the present convention.

#### ARTICLE XVI.

States which have not taken part in the present convention shall be permitted to adhere to it at their request.

Such adhesion shall be notified officially through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the others. It shall imply complete accession to all the clauses, and admission to all the advantages stipulated by the present convention.

## APPENDIX.

## ARTICLE XVII.

The execution of the reciprocal engagements contained in the present convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the constitutional laws of those of the high contracting parties who are bound to procure the application of the same, which they engage to do with as little delay as possible.

## ARTICLE XVIII.

The present convention shall come into operation one month after the exchange of ratifications, and shall remain in force for an unlimited time, till the expiry of one year from the date of its denunciation. This denunciation shall be addressed to the Government commissioned to receive adhesions. It shall only affect the denouncing state, the convention remaining in operation as regards the other contracting parties.

## ARTICLE XIX.

The present convention shall be ratified, and the ratifications exchanged in Paris, within one year at the latest.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto their seals.

Dated at Paris the 20th March, 1883.

*(Signed by the Plenipotentiaries.)*

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## II.

## FINAL PROTOCOL.

*(Official Translation.)*

On proceeding to the signature of the convention concluded this day between the Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia, and Switzerland, for the protection of industrial property, the undersigned plenipotentiaries have agreed as follows:—

1. The words "industrial property" are to be understood in their broadest sense; they are not to apply simply to industrial products properly so called, but also to agricultural products (wines, corn, fruits, cattle, &c.), and to mineral products employed in commerce (mineral waters, &c.).

2. (Relates only to patents.)

3. The last paragraph of Article II. does not affect the legislation of each of the contracting states as regards the procedure to be followed before the tribunals, and the competence of those tribunals.

4. Paragraph 1 of Article VI. is to be understood as meaning that no trade mark shall be excluded from protection in any state of the union, from the fact alone that it does not satisfy, in regard to the signs composing it, the conditions of the legislation of that state; provided that on this point it comply with the legislation of the country of origin, and that it had been properly registered in said country of origin. With this exception,

which relates only to the form of the mark, and under reserve of the provisions of the other articles of the convention, the internal legislation of each state remains in force.

To avoid misconception, it is agreed that the use of public armorial bearings and decorations may be considered as being contrary to public order in the sense of the last paragraph of Article VI.

5. The organisation of the special department for industrial property mentioned in Article XII. shall comprise, so far as possible, the publication in each state of a periodical official paper.

6. (After providing for the common expenses of the international office, continues :—)

The Swiss Government will superintend the expenses of the international office, advance the necessary funds, and render an annual account, which will be communicated to all the other administrations.

The international office will centralise information of every kind relating to the protection of industrial property, and will bring it together in the form of a general statistical statement which will be distributed to all the administrations. It will interest itself in all matters of common utility to the union, and will edit, with the help of the documents supplied to it by the various administrations, a periodical paper in the French language dealing with questions regarding the object of the union.

The numbers of this paper, as well as all the

documents published by the international office, will be circulated among the administrations of the states of the union in the proportion of the number of contributing units as mentioned above. Such further copies as may be desired either by the said administrations, or by societies or private persons, will be paid for separately.

The international office shall at all times hold itself at the service of members of the union, in order to supply them with any special information they may need on questions relating to the international system of industrial property.

The administration of the country in which the next conference is to be held will make preparation for the transactions of that conference, with the assistance of the international office.

The director of the international office will be present at the meetings of the conferences, and will take part in the discussions, but without the privilege of voting.

He will furnish an annual report upon his administration of the office, which shall be communicated to all the members of the union.

The official language of the international office will be French.

7. The present final protocol, which shall be ratified together with the convention concluded this day shall be considered as forming an integral part of, and shall have the same force, validity, and duration as the said convention.

In witness whereof the undersigned plenipotentiaries have drawn up the present protocol.

*(Signed by the Plenipotentiaries.)*

## III.

ACCESSION OF HER MAJESTY'S GOVERNMENT TO  
THE CONVENTION.

The undersigned, ambassador extraordinary and plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland to the French Republic, declares that Her Britannic Majesty, having had the International Convention for the Protection of Industrial Property, concluded at Paris on the 20th March, 1883, and the protocol relating thereto, signed on the same date, laid before her, and availing herself of the right reserved by Article XVI. of that convention to States not parties to the original convention, accedes, on behalf of the United Kingdom of Great Britain and Ireland, to the said international convention for the protection of industrial property, and to the said protocol, which are to be considered as inserted word for word in the present declaration, and formally engages, as far as regards the President of the French Republic and the other high contracting parties, to co-operate on her part in the execution of the stipulations contained in the convention and protocol aforesaid.

The undersigned makes this declaration on the part of Her Britannic Majesty with the express understanding that power is reserved to Her Britannic Majesty to accede to the Convention on behalf of the Isle of Man and the Channel Islands, and any of Her Majesty's possessions, on due notice

to that effect being given through Her Majesty's Government.

In witness whereof the undersigned, duly authorized, has signed the present declaration of accession, and has affixed thereto the seal of his arms.

Done at Paris, on the 17th day of March, 1884.

(L.S.)      (Signed)      LYONS.

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IV.

DECLARATION OF ACCEPTANCE OF ACCESSION.

*(Official Translation.)*

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having acceded to the International Convention relative to the protection of industrial property, concluded at Paris, March 20, 1883, together with a protocol dated the same day, by the declaration of accession delivered by Her Ambassador Extraordinary and Plenipotentiary to the Government of the French Republic; the text of which declaration is word for word as follows:—

*(Here is inserted the text of No. III. in English.)*

The President of the French Republic has authorized the undersigned, President of the Council, Minister for Foreign Affairs, to formally accept the said accession, together with the reserves which are contained in it concerning the Isle of Man, the Channel Islands, and all other possessions of Her

Britannic Majesty, engaging as well in his own name as in that of the other high contracting parties to assist in the accomplishment of the obligations stipulated in the convention and the protocol thereto annexed, which may concern the United Kingdom of Great Britain and Ireland.

In witness whereof the undersigned, duly authorized, has drawn up the present Declaration of Acceptance and has affixed thereto his seal.

Done at Paris, the 2nd April, 1884.

(L.S.) (Signed) JULES FERRY.

PATENTS, DESIGNS, AND TRADE  
MARKS ACT, 1883

(46 &amp; 47 VICT. c. 57), ss. 103, 104.

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*International and Colonial Arrangements.*

**103.** (1.) If her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state.

International  
arrange-  
ments for  
protection  
of inven-  
tions, de-  
signs, and  
trade  
marks.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or

the actual registration of his design or trade mark in this country, as the case may be.

(2.) The publication in the United Kingdom, or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark :

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act : Provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act :

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

Provision  
for colonies and  
India.

**104.** (1.) Where it is made to appear to her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks,



patented or registered in this country, it shall be lawful for her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to her Majesty in Council may seem fit, to such British possession.

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for her Majesty in Council to revoke any Order in Council made under this Act.

## ORDERS IN COUNCIL.

## THE PATENTS ACT, 1883.

*At the Court at Windsor, the 26th June, 1884.*

*Present, the Queen's most Excellent Majesty in Council.*

WHEREAS by the provisions of the Patents, Designs, and Trade Marks Act, 1883, it is, amongst other things, provided :—

That if Her Majesty is pleased to make any arrangement with the Government or Governments of any foreign State or States for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such State shall, subject to the conditions further provided and set forth in the said Act, be entitled to a patent for his invention, or to registration of his design or trade mark (as the case may be) under the said Act in priority to other applicants, and such patent or registration shall have the same date as the date of the protection obtained in such foreign State :

And whereas it has pleased Her Majesty to make an arrangement of the nature contemplated by the said Act by and in virtue of a declaration signed and sealed by Her Majesty's Ambassador

at Paris on the 17th of March, 1884, duly conveying the accession of Great Britain to the International Convention and Protocol for the Protection of Industrial Property, signed by representatives of certain powers on the 20th of March, 1883, and duly ratified on the 6th of June, 1884, power being reserved to Her Majesty to hereafter accede to the provisions of the said convention and protocol on behalf of the Isle of Man, the Channel Islands, and any of Her Majesty's possessions, which declaration of accession was duly accepted by the French Government on behalf of the signatory powers by and in virtue of a declaration dated the 2nd of April, 1884 :

Now, therefore, Her Majesty, by and with the advice and consent of her Privy Council, and by virtue of the authority committed to her by the said Act, doth declare, and it is hereby declared, that the provisions of the said Act hereinbefore specified shall apply to the following countries, viz. :—Belgium, Brazil, France, Guatemala, Italy, Netherlands, Portugal, Salvador, Servia, Spain, Switzerland, Ecuador,\* and Tunis.\*

And it is hereby further ordered and declared, that this Order shall take effect from the 7th of July, 1884.

C. L. PEEL.

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\* These States acceded to the Convention and Protocol; Ecuador subsequently withdrew.

*Further Orders in Council applicable to the following States.*

Order in Council—

- 27th January, 1885, Santo Domingo.
- 9th July, 1885, Sweden and Norway.
- 17th September, 1885, Queensland.
- 16th April, 1886, Ecuador (withdrawn).
- 24th September, 1886, Salvador.
- 24th September, 1886, Paraguay and Uruguay.
- 12th July, 1887, United States of America.



*At the Court at Windsor, the 28th day of November, 1887. Present, The Queen's most Excellent Majesty in Council.*

WHEREAS by the Merchandise Marks Act, 1887, 50 & 51 Vict. c. 28, it is, amongst other things, provided that—

- (1.) Every person who, after the date fixed by Order in Council, sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch

case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom) and in such a mode as may be from time to time directed by Order in Council.

- (2.) The declaration may be made before an officer of an assay office appointed in that behalf by the office (which officer is hereby authorized to administer such a declaration) or before a justice of the peace or a commissioner having power to administer oaths in the Supreme Court of Judicature in England or Ireland or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.
- (3.) Every person who makes a false declaration for the purposes of this section shall be liable on conviction or indictment to the penalties of perjury, and, on summary conviction, to a fine not exceeding twenty pounds for each offence.

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in exercise of the powers vested in her by the above recited provisions of the said Act, is pleased to order and declare, and doth hereby order and declare, that where it appears by such declaration that such watch cases have been made in some country or

place out of the United Kingdom, then the following authorities, that is to say :—

The Wardens and Commonalty of the Mystery of Goldsmiths of the City of London ;

The Guardians of the Standard of Wrought Plate, Birmingham ;

The Company of Goldsmiths of the City of Chester ;

The Guardians of the Standard of Wrought Plate, Sheffield.

The Incorporation of Goldsmiths of the City of Edinburgh ;

The Goldsmiths' Company of the City of Glasgow ;

The Fraternity or Company of Goldsmiths of the City of Dublin ;

shall respectively cause to be placed on such watch cases the marks more particularly described and delineated in Schedule II. hereunto annexed, and no other mark or marks, and such marks are hereby authorized accordingly.

And it is hereby further ordered and declared, that the declaration to be made shall be in the form set forth in Schedule I. hereunto annexed.

This Order shall come into operation on the first day of January, one thousand eight hundred and eighty-eight.

C. L. PEEL.

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## SCHEDULE I.

*Form of Declaration.*

I<sup>1</sup> do hereby declare that the [watch case] or [watch cases] [brought] or [sent] by me this day to the Assay Office at in number and in a parcel marked [was] [were] made in <sup>2</sup>.  
 Declared at this day of ,  
 18 .

Before me <sup>3</sup>.

Officer of the aforesaid Assay Office  
 appointed in that behalf.

or, Justice of the Peace for

or, Commissioner having power to administer oaths in the Supreme Court of Judicature in England.  
 [Supreme Court of Judicature in Ireland.]

[Court of Session in Scotland.]

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 SCHEDULE II.

On a foreign gold case:—

Within a shield of the form of a cross, and of the size shown in Figure I. of the Appendix hereto, the word "Foreign," over which a hall mark particular to each

<sup>1</sup> Here insert name and address of declarant.

<sup>2</sup> Signature of declarant.

<sup>3</sup> Signature and title of person before whom the declaration is made.

office shown in Figure III. and the carat value of the gold, and under which the decimal equivalent of the carat value of the gold together with the variable annual date letter.

On a foreign silver case:—

Within a shield of the form of a regular octagon and of the size shown in Figure II, of the Appendix hereto, the word "Foreign," over which a hall mark particular to each office shown in Figure III. and under which the variable annual date letter.

The particular hall mark above referred to for each of the seven assay offices at which foreign cases may be stamped is shown in Figure V. of the Appendix hereto.



APPENDIX TO SCHEDULE II, SHEET I.

Figure 1.



*Shield for Foreign  
Gold Case.  
(Actual Size.)*

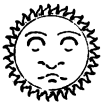
Figure 2.



*Shield for Foreign  
Silver Case.  
(Actual Size.)*

Figure 3.

*Particular Mark for each Hall.*



*London  
(Phœbus)*



*Birmingham  
{ Equilateral }  
{ Triangle. }*



*Chester.  
{ Acorn and }  
{ two leaves. }*



*Sheffield.  
(Ground Arrows)*



*Edinburgh  
(S<sup>t</sup> Andrew's Cross.)*



*Glasgow  
(Bishop's Mitre)*



*Dublin.  
(Shamrock)*

Figure 4

*Carat Marks for Gold.*

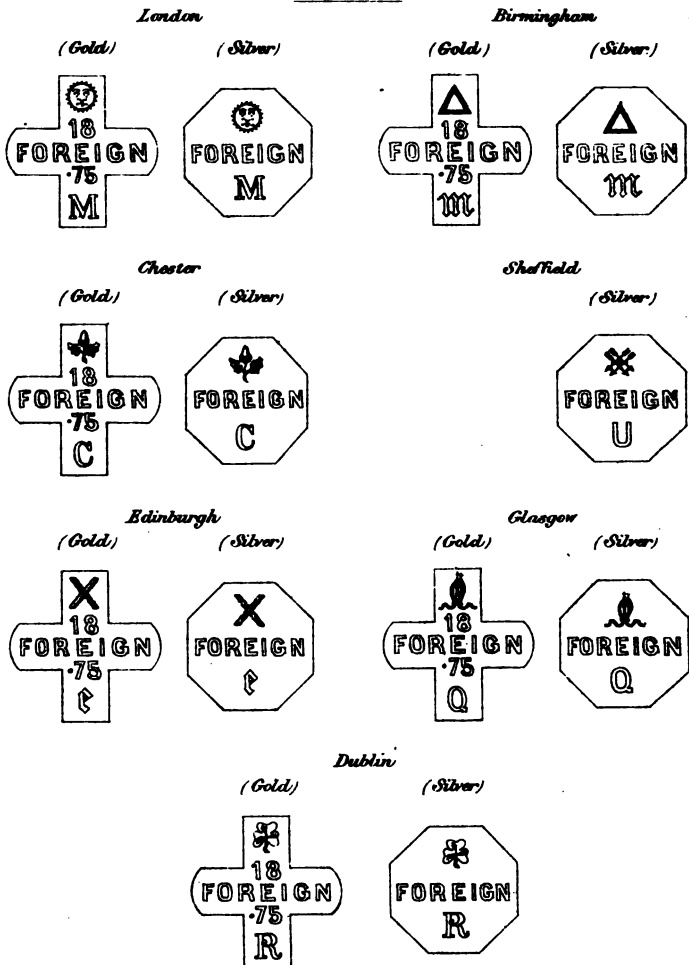
22, and 917  
20, and 833.  
18, and 75.  
15, and 625.  
12, and 5  
8, and 375

APPENDIX TO SCHEDULE II, SHEET II.

Figure 5.

Representation of Marks.

(Six times the actual size.)



NOTE.

The annual variable date-letter is to be inserted in position as shown above. The proper gold carat value is also to be inserted in position as shown above.

GENERAL ORDER *issued by the Commissioners of Customs in regard to Watch Cases and Watches.*

—◆—  
CUSTOM HOUSE, LONDON.  
18th January, 1888.

SIR,

In accordance with paragraph 33 of General Order  $\frac{89}{1887}$ , I now transmit to you the directions of the Board, to enable you to deal with watch cases and watches, under the Merchandise Marks Act; the latter term, watches, meaning, as provided by section 7 of the Act, "all that portion of a watch which is not the watch case."

Your attention has already, by G.O.  $\frac{81}{1887}$ , been called to the position in which watch cases, under this section, stand in relation to watches; and the consequent importance of the assay mark on watch cases, which mark, by virtue of section 3 (1) of the Act, would be deemed a trade description as to place or country of origin.

You will note, in addition, that by section 8 (1) of the Act, provision is made for preventing foreign-made watch cases from obtaining the

mark placed on a watch case made in the United Kingdom: and it is enacted that a different mark shall be placed on foreign watch cases of such pattern, and in such mode as directed by Order in Council.

An Order in Council to this effect, dated the 28th of November last, was published in *The London Gazette* of 9th December last, and a copy of this order, together with sheets 1 and 2 of Appendix to Schedule II. therein referred to, which contain diagrams of the required new marks, are sent to you herewith.

You will carefully study these sheets, and note how the marks apply variously to the different assay offices in the United Kingdom.

The directions to be observed by you in applying this new law will relate to—

- (a.) Watch cases with assay marks imported alone.
- (b.) Like watch cases imported with the watches, that is to say, watches of foreign manufacture in them.

(a.)—*Watch Cases with Assay Marks imported alone.*

If the cases are wholly unmarked, or are duly marked in accordance with the Order in Council, or with a foreign assay mark, and there is not, in addition, any wording on any part of the case proper, or on the dome, indicating make or produce in the United Kingdom, the goods may be delivered. If, on the other hand, there is any

such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with British Hall Mark as placed on watch cases made in the United Kingdom, you will detain the goods unless they are entered as "British goods brought back," in which case they may be admitted under the usual regulations.

(b.)—*Watch Cases imported with the Watches in them.*

If the cases are wholly unmarked, or are marked either

In accordance with the Order in Council, or

With a foreign assay mark, or

With a British assay mark as placed on a watch case made in the United Kingdom, and with an equally conspicuous statement, as regards the watch itself, either above or below the assay mark, that the watch is of foreign make,

And if there is no wording either as an addition on the case or dome, or upon the watch itself, whether on the dial or the plate, or any part of the works, indicating make or produce in the United Kingdom, then the goods may be delivered.

If, on the other hand, there is any such wording, the goods must be detained and the matter referred to the Board.

If the cases are marked with a British assay mark as placed on a watch case made in the United Kingdom, and with no statement of foreign make on the cases, as required above, you

will detain them as a seizure, unless there is upon the dial of each watch and also on the top "plate" (where the watch is of that construction) or on the "bottom plate" where the watch is of that construction visibly, between the "bridges," an indelible and definite indication of the place or country in which the watches were made. Such an indication will be considered definite, if it is, or contains only the name of the place or country of origin; if in addition, it contains the name of a place in, or a part of the United Kingdom, as, for instance, "Geneva and London," or if there is anywhere on the watch an indication by figures, words, or otherwise, that the watch might be the make or produce of the United Kingdom, then, in addition to the name of place or country of origin, there must be a distinct statement that the watches were there made.

I am, Sir,

Your obedient Servant,

E. GOODWYN.

The Collector  
at

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